KILLED BY A THIEF

Police officer J. W. Mahelona was last night shot and killed by Ho Young, a Chinese chicken thief who resisted arrest. Ho Young was discovered by Chas. Clark, Jr., as he was going to his father's house in Buckle's lane, off Liliha street, near Vineyard, a little before 11 o'clock. The Chinaman came running out of the Clark's gate when the latter saw him. Clark ran down Liliha street and notified Officer Mahelona, who was on the Liliha beat.

Ho Young was found behind some bushes near Liliha street. Mahelona drew his revolver and ordered him out. As the Chinese did not obey the officer dragged him out. He had two chickens in a bag and his pockets were full of eggs. The Chinese was taken down towards the police call box. Two sons of Captain Parker joined the officer and Clark on the way then.

When the alarm box was reached Ho Young said he had left behind a bag with chickens in it. He offered to show it to the officer. The men went back to a lot a couple of blocks up Liliha street. Mahelona went with the Chinaman, leaving the other there. A few moments later a shot was heard. Clark ran up to the officer. He found him struggling with Ho Young, who had a revolver in his hand.

Clark threw his arms around the Chinaman, at the same time catching hold of the hand in which he held the revolver. Mahelona fell to the ground. He drew his gun and fired four shots at Ho Young. One bullet struck Clark in the elbow, but nevertheless the young man pluckily held on to the offender until the Parker boys came to his assistance and overpowered Young.

At this time a crowd had gathered. Officers put Ho Young in a hack and took him to the police station where he was locked up. An officer was detailed to guard his cell and every precaution was taken to guard against the prisoner's committing suicide. Ho Young strenuously denied that he had done the shooting. He was recognized by the police as an old offender.

When the patrol wagon arrived officer Mahelona had already expired. A post-mortem examination held by Dr. McDonald showed that a bullet had entered Mahelona's neck below the left jaw and had ranged upward into the head. Chas. Clark's wound was found to be a slight one.

CORNWELL FUNERAL SET FOR SUNDAY

The body of the late Col. Wm. H. Cornwell arrived from Maui in the Mauna Loa this morning, accompanied by the widow and son. The casket was taken immediately to the undertaking establishment of H. H. Williams and placed in the parlor, where the body is to lie until Sunday. The members of the family accompanying the body were taken to the home of Mr. and Mrs. J. S. Walker on King street.

The funeral has been set for Sunday afternoon at 3 o'clock, the services to be Masonic. The body, which came packed in ice and will be kept in the same manner here, will remain at the undertaking establishment until Sunday morning, when the casket will be removed to the Masonic Temple.

After the Masonic services at the temple the body will be taken to Central Union where the regular church services will be held, these to be conducted by Rev. W. M. Kincaid.

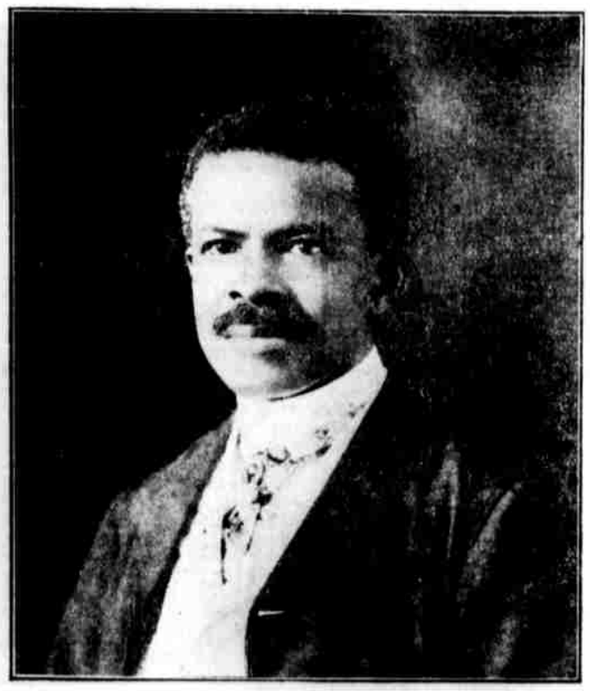
F. W. Macfarlane has charge of the funeral arrangements. Yesterday he received a wireless message from Mrs. Cornwell stating that she wished the Masons to take charge of the funeral. Honolulu Commandery, No. 1, K. T., will turn out.

DEPOT IMPROVEMENTS

Extensive improvements are being made by the O. R. & L. Co. at their depot in Kapalama. The old main depot has been raised and moved mauka of its former location to a place nearer King street. It has also been fitted up with new and sanitary improvements, such as lavatories, etc. The surrounding yard has been filled in and is now three feet higher than formerly. A new passenger shed 400 feet in length is being erected and within it three parallel tracks have been laid. These are 700 feet long and join the main line about 300 feet Ewa of the shed, which is open at each end in order to permit one or more trains to come in at the same time from the Ewa end, while waiting hacks at the Waikiki end can pick up the passengers from the trains without any person getting wet during the change, should it be raining. These improvements will add to the general appearance of the neighborhood and will be a new convenience to the traveling public.

The Italian flag over the Consulate, corner of Merchant and Kaahumanu streets, is flying today in honor of the birthday of the Queen Dowager of Italy. The Italian cruiser in port was dressed today in honor of the event.

STEWART ON ELECTION TEST



When seen today, T. McCants Stewart said that the Supreme Court will take up the election contest on December 7th, that there will be no politics in it. "I thoroughly believe that although a majority of the Justices are Republican, they will take up the matter in a patriotic spirit and will protect the purity of our elections. I am a Republican; but I stand for fair play, for honest methods, for a free ballot and a fair count, and the Supreme Court will not play politics with this matter.

"We charge fraud only in one precinct, and upon only one person, H. C. Birbe, and I expect to prove it. In the other precincts we shall ask the Court to decide if Attorney General Andrews is right in holding that an entire ballot should be rejected for a mistake in voting for only one office. Then some ballots were rejected because one leg of the cross was too short, and other reasons, which I do not think will be sustained."

T. McCants Stewart was born in Charleston, S. C., December 28, 1854, of George Gilchrist Stewart and Anna Morris Stewart; he was educated in private and public schools there, and in the preparatory department of Howard University, Washington D. C.; graduated in 1875 from the University of South Carolina, with the degrees of A. B. and LL.B.; admitted to bar and practiced law in S. C. 1873; was professor of mathematics State Agricultural College of South Carolina, 1877-8; took post graduate course in philosophy at Princeton College, under Dr. McCosh, from '78-'80, and was member of the Princeton Alumni Association of New York; was member of the Brooklyn (N. Y.) Board of Education, and practiced law in New York City till the fall of '98, when he "followed the flag" to Hawaii, arriving here in November, 1898; located at Honolulu, where he is now practicing law; he has a large civil practice; he assisted in organizing, and was counsel also for the Master Builders' Association, and when that association was merged into the Builders' Exchange, he assisted in organizing the latter body; is attorney for the Palolo Land and Improvement Company; acted for a time, by appointment of Judge M. M. Estee, United States District Attorney; takes an active part in public affairs; took a leading part in organizing the Republican party of the Territory; was on the first Territorial Central Committee, and acted for a time as its chairman; is a member of the executive committee of the Bar Association; takes an active interest in Y. M. C. A. work, serving on the educational committee of the Association in Honolulu; is married and has his home in Kalihi.

RAPID TRANSIT LOSES

JUDGE DICKEY WINS HIS TRANSFER POINT AND $100

SUPREME COURT UNANIMOUSLY REVERSES JUDGE DE BOLT'S DECISION — CONDUCTOR REFUSED A TRIP SLIP.

Judge Lyle A. Dickey wins his suit against the Honolulu Rapid Transit & Land Company, recovering $100 asked for by reasons of a conductor's refusal to give him a transfer.

The Supreme Court, rendering its decision, reverses Judge De Bolt who found in favor of the defendant corporation and directs the circuit court to render judgment for plaintiff.

Justice Perry writes the opinion, which is unanimous.

Judge Dickey appeared personally. Castle & Wittington for defendant.

Says the syllabus:

A passenger on the cars of the Honolulu Rapid Transit & Land Company may not lawfully be charged more than five cents for a continuous ride from the corner of King and Keeaumoku streets, along King, McCully, Beretania and Alexander streets to Wilder avenue. Such a passenger is entitled, without the payment of an extra fare, to transfer from the King street to the McCully street line and to receive a transfer ticket therefor.

After stating the case and reviewing the various routes of defendant's tracks the opinion goes on to say:

At the corner of McCully and King streets, the overhead wires were not connected. The plaintiff entered an east-bound car of the defendant on King street at the corner of Keeaumoku, paid five cents as his fare and asked for a transfer ticket to a car going mauka on McCully street. This request was refused. At the corner of King and McCully streets the plaintiff left the King street car and entered the first car on McCully street going mauka and left the latter at the corner of Wilder avenue and Alexander street. While on the last mentioned car the plaintiff was charged and paid an additional sum of five cents as fare. It is for this alleged overcharge that the action is brought. The facts of the case are understood and the only question is whether under the provisions of Act 69 the defendant could lawfully refuse to give the transfer ticket demanded and charge an additional fare on McCully street.

The ground traversed by the plaintiff in his ride was wholly between Moanalua on the west and Diamond Head on the east and is conceded to have been wholly makai of a line drawn parallel to the sea-coast and one and a half miles distant therefrom. It was entirely within the outer geographical limits prescribed by the first subdivision of the section. There is no requirement that each five cent ride shall be in one general direction. A limitation as to direction may perhaps be inferred from the use of the word "ride" in subdivision 3 and the word "ride" in subdivision 4. It may be that these words of themselves should be held to indicate an intention on the part of the Legislature to prevent the taking of a return trip for a one fare (see Dickey v. Haw. Tramways Co., 16 Haw. 487, 2001); but it is unnecessary to pass upon that point in this case, for the plaintiff did not attempt to take a return trip. He traveled in one general direction only, away from his starting point, as much so as if he had continued to the Manoa valley terminus of the line. Nor need we say how much beyond the corner of Wilder avenue and Alexander street the plaintiff could have ridden before the company could have lawfully charged him an additional fare; it is sufficient for the purposes of this case to say that the ride which he did take was well within all the limitations prescribed by the statute.

The main argument for the defendant is that to uphold the plaintiff's contention is to enable a passenger to ride "around and around" for a single fare or at least to open the door for fraud of that kind. We do not hold that a passenger may so ride. As to the possible perpetration of fraud, the statute to make, with the approval of the Governor, reasonable rules and regulations to prevent it and its officers and employes will no doubt be able to devise such rules as will prove effective to carry out that purpose and prevent passengers from riding beyond the point to which they may lawfully ride for one fare.

The plaintiff's ride was a continuous one, and the line to which a transfer was demanded was a connecting line within the meaning of the statute. The mere fact that the overhead wires were not then connected at that corner would not, of course, render the McCully street line any the less a connecting line (see Dickey v. Haw. Tramways Co., supra, and Haw. Tramways Co. v. Sturdevant, 16 597, 599); nor can the company by a mere rule make a line a connecting one for some purposes and a non-connecting one for other purposes. Its power to make rules is always subject to the limitation that such rules must not conflict with the other provisions of the statute.

SUPREME COURT SUSTAINS HARDY

Unanimously the Supreme Court affirms the decree of Judge Hardy of Kauai in the suit to quiet title of Kuala vs. Knapini. The syllabus is as follows:

In an equity suit to quiet title, in which the plaintiff relies on adverse possession, an objection that the title had not previously been determined at law, comes too late when made for the first time in this court and this court should not of it own motion dismiss the bill because of such alleged want of equity.

Says the opinion, written by Chief Justice Frear:

This is a bill in equity to quiet title. The plaintiff admits that the defendant has the record or paper title, but contends that she has acquired a title by adverse possession. The entire controversy, as shown by the pleadings, the evidence, the opinion of the Circuit Judge and the arguments of counsel, turns on the question of adverse possession. The plaintiff's right or title has not been adjudicated in a court of law. If this is a proper case for equity, then any one claiming by adverse possession may have the question tried and determined in a suit in equity, however plain, complete and adequate the remedy at law may be, and may then also deprive the defendant of a the failure of counsel to raise it, and trial by jury. It is clear that this is not a proper case for equity. But has not the question as to whether equity should act in this case been waived by should this court notice it of its own motion? At the request of th ecourt, counsel has filed supplementary briefs on these points. The defendant, it is true suggested a want of jurisdiction in his answer and in his notice of appeal, but it does not appear that these suggestions were based on this ground and apparently they were abandoned. It seems to be conceded that the plaintiff was in possession during a portion at least of those intervening few weeks, including the last portion when the suit was brought. Apparently the defendant claimed that he entered on the sixth of September and remained in possession, with the plaintiff for at least a part of the time, until the suit was brought, though it does not appear how far his claim was based on fact. The Circuit Judge found as a fact that the plaintiff was in possession up to the time of trial and such finding is sustained by the evidence. Under these circumstances we must hold that equity was not wholly without jurisdiction and that the mere fact that the title had not first been adjudicated at law cannot avail the defendant at this stage.

As to the merits of the case the question is merely one of fact and the findings of the Circuit Judge appear to be sustained by the evidence. It will serve no useful purpose to review the evidence at length.